

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-NF-030
)	
Tri-County Broadcasting, Inc.)	NAL/Acct. No. 200232640007
Licensee of AM Radio Station WBRG)	
in Madison Heights, Virginia)	FRN 6015929
Lynchburg, Virginia)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 15, 2002

By the Enforcement Bureau, Norfolk Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Tri-County Broadcasting, Inc. (“TCB”), licensee of AM station WBRG, Madison Heights, Virginia, apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 73.1745(a) of the Commission’s Rules (“Rules”).¹ Specifically, we find TCB apparently liable for exceeding its authorized power by failing to reduce power at sunset and by failing to limit its pre-sunrise power.

II. BACKGROUND

2. In response to information that radio station WBRG exceeded its authorized power during pre-sunrise hours, an agent of the Commission’s Norfolk Field Office (“Field Office”) observed WBRG’s field-strength level on 1.050 MHz in Lynchburg, Virginia, on February 27, and February 28, 2002. On February 27, 2002, WBRG’s field-strength level remained constant between 4:30 PM and 9:25 PM; i.e., the required reduction in power did not occur at sunset (6:00 PM). The station stopped broadcasting between 9:25 PM and 10:16 PM on February 27, 2002, and re-commenced broadcasting before 6:30 AM on February 28, 2002. On February 28, 2002, pre-sunrise field-strength levels at 6:30 AM were at the same level as the previous day; and at sunrise (7:00 AM), an increase in power did not occur.

3. After observing signal levels, the agent inspected TCB’s WBRG facilities on February 28, 2002. TCB provided copies of its authorizations that specified its maximum pre-sunrise, daytime and nighttime power levels of 475, 1,000 and 98 watts, respectively. Station logs, meter readings, and the agent’s direct power measurement revealed that the station was operating with about 1,000 watts of power during pre-sunrise, day, and night times. The agent notified TCB’s management of its power violation and of other violations.

4. On March 4, 2002, TCB sent the Field Office a fax detailing action taken by TCB to correct the violations of excessive power during pre-sunrise time or nighttime, including training its staff to

¹ 47 C.F.R. § 73.1745(a).

increase and reduce power at required times.

III. DISCUSSION

5. Section 73.1745(a) of the Rules requires broadcast stations to operate at times, with modes or with power levels, specified in the license the FCC issues to the station. TCB operated its radio station WBRG with daytime power during the evening of February 27, 2002, and during pre-sunrise on February 28, 2002.

6. Based on the evidence before us, we find TCB, willfully² and repeatedly³ violated Section 73.1745(a) of the Rules by operating with excessive power.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for excessive power operation is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ While the agent and TCB management were discussing violations on February 28, 2002, the TCB manager said that his station had a history of compliance and asked for leniency. TCB also sent the Field Office a fax with a similar statement and request. However, the continuing nature of TCB’s overpower operation does not warrant a reduction of monetary forfeiture. Thus, considering the entire record and applying the statutory factors listed above, this case warrants a forfeiture of \$4,000.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ TCB is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars for willful and repeated violation of Section 73.1745(a) of the Rules by failing to reduce power at sunset and by failing to limit power before sunrise.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, TCB SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Tri-County Broadcasting, Inc., WBRG, POB 1079, Lynchburg, VA, 24505.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Husnay
Resident Agent, Norfolk Office, Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.

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